

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
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COURT
FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

vs.

Case No. 8:03-CR-77-T-30TBM

GHASSAN ZAYED BALLUT
_____ /

**DEFENDANT GHASSAN BALLUT'S MEMORANDUM IN RESPONSE TO
GOVERNMENT'S MOTION FOR A RULE 16(d)(1) PROTECTIVE ORDER**

The Defendant, GHASSAN ZAYED BALLUT, by and through his undersigned counsel, hereby responds to the Government's Motion for a Rule 16(d)(1) Protective Order with an attached proposed Protective Order.

The Government's Motion relates to the documents obtained from the State of Israel that include photographs and medical reports of terrorist attack victims as described in hospital reports, autopsy reports, bomb technician reports, and similar documents. It has been represented by the Government that the written documents are principally or entirely in Hebrew. The Government describes this as "sensitive information." The Defendant and his counsel are mindful that both privacy and security concerns are at issue in the dissemination of this material. Of overriding concern, however, is the purpose for which this material is being provided, namely, to apprise the Defendant of the material intended for use by the Government at trial so that the Defendant may prepare his defense, including his response to any examination or scientific test. Fed. R. Crim. P. 16(a)(1)(E) and (F). The Defendant submits that both interests can be met with some modification to the Government's proposed Order.

First, it should be recognized that there are two general categories of documents described

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in the Government's motion, being reports and photographs. To be rendered from Hebrew into English, the reports require the scrutiny of a translator so that the text of the reports can be translated and transcribed or alternatively summarized for use by the Defendants and their counsel. This process will be time consuming and require substantial attention to detail for which the F.B.I. office and the monitoring of the translator are not conducive. On the other hand, the photographs, presumably more graphic and invasive of privacy than the reports, obviously do not require translation and can be quickly reviewed by attorneys and paralegals, unless a need arises later for expert scrutiny.

The Government treats these two general categories collectively, but in so doing the ability of the Defendants and their counsel to utilize the text reports would be unduly hampered. While the photographs can remain in the immediate possession of the Government while being reviewed, the text reports must be labored over to be translated or summarized into English, and the English translations or summaries themselves must be provided to the Defendants and their counsel for use in the preparation of their defense. The Government's proposed Order makes no practical allowance for this process. The Government's proposed Order contemplates that the translator must necessarily view the documents while they remain in the possession of the Government, presumably at the Tampa F.B.I. office, and perform the act of translation there. The Defendant submits that because of the time requirements and the necessary concentration for the translation process, performing the translation at the F.B.I. office is not a practical solution. Further, no provision is made in the proposed Order for the handling and distribution of translations and summaries produced by the translator.

The Government's analogy to United States v. Kimbrough, 69 F.3d 723 (5th Cir. 1995), is

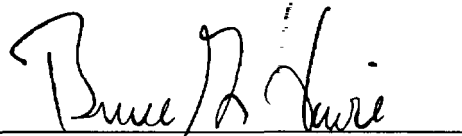
not apt. In Kimbrough, a child pornography case, personal possession of the material and its duplication constituted a crime. Under those circumstances, monitoring of viewing and prohibition against copying was entirely appropriate. Here, the Government's only interest is in avoiding public or unauthorized dissemination of sensitive material. There is no need in this case to apply the extensive restrictions approved in Kimbrough. The Government has not cited any case directly applicable to these particular circumstances, and the Defendant submits that the Court should be guided by basic principles of the law on discovery and protective orders.

The Defendant would propose that the Court's Protective Order distinguish between the photographs and the reports. The photographs should remain in the immediate possession of the Government for viewing at reasonable times and under reasonable circumstances and not copied without further Court order. The Government should provide one copy of the written reports, in installments if necessary, to the Hebrew translator so that the translation and summarization can occur at another location without the constraints of time and facilities of the F.B.I. office. The translator can return the copies of the reports to the Government and should be permitted to provide a copy of the translations and summaries to counsel for each Defendant. The translator, defendants, counsel and their staff would be prohibited by the Protective Order from sharing these translations with any unauthorized persons. At the conclusion of the case, these translations and summaries can be returned to the Government. This would satisfy the purposes of discovery while preventing the dissemination of the sensitive information. As for the protection of personal privacy, the Government has already taken the step of redacting from these documents the addresses and identification numbers of the witnesses and victims of violent acts.

The Government's proposal of continuous possession of the reports in paragraph 3 of the

proposed Order is entirely too restrictive to permit the Defendant the full and complete ability to review, understand, and assess the reports. The language in other parts of the proposed Order, particularly paragraphs 2 and 4, is sufficient to identify and sanction any misuse of these reports. The Defendant therefore requests the Court to modify the proposed Order to reflect the Defendant's proposals set forth above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce G. Howie", is written over a horizontal line.

Bruce G. Howie
Piper, Ludin, Howie & Werner, P.A.
5720 Central Avenue
St. Petersburg, FL 33707
Telephone (727) 344-1111
Facsimile (727) 344-1117
Florida Bar No. 263230
Attorney for GHASSAN ZAYED BALLUT

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S.

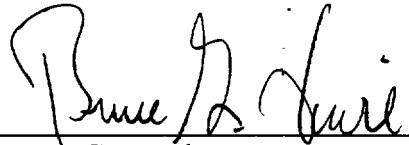
Mail to the following this 15th day of March, 2004.

Walter E. Furr, III Esq.
Office of the United States Attorney
400 North Tampa Street, Suite 3200
Tampa, FL 33602

William B. Moffitt, Esq.
Asbill, Moffitt & Boss, Chtd.
1615 New Hampshire Avenue, N.W.
Washington, DC 20009

M. Allison Guagliardo, Esq.
Office of the Federal Public Defender
400 North Tampa Street, Suite 2700
Tampa, FL 33602

Stephen N. Bernstein, Esq.
P.O. Box 1642
Gainesville, FL 32602-1642



Bruce G. Howie
Piper, Ludin, Howie & Werner, P.A.
5720 Central Avenue
St. Petersburg, FL 33707
Telephone (727) 344-1111
Facsimile (727) 344-1117
Florida Bar No. 263230
Attorney for GHASSAN ZAYED BALLUT